IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 15881 of 2006(N)

PETITIONER:

V.K. LALITHAMBIKA DEVY,
W/O. LATE SGT.P.R.C. NAIR NO.230077, KAILASOM,
40/2D8, PERANDOOR BRIDGE ROAD, ELAMAKKARA P.O.,
COCHIN-682 026.

BY ADV. SRI.P.K.RAVISANKAR.

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY ITS SECRETARY, MINISTRY OF DEFENCE,
   NEW DELHI.

2. **PRINCIPAL CONTROLLER OF DEFENCE**
   ACCOUNS (PENSION), ALLAHABAD.

3. **OFFICER-IN-CHARGE,**
   AIR FORCE RECORD OFFICE, SUBROTO PARK,
   NEW DELHI-110 010.

BY ADV. SRI.P. PARAMESWARAN NAIR, ASSISTANT SG.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.15881/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER NO. 24/03/2006 ISSUED BY THE ASSISTANT GENERAL MANAGER, RESERVE BANK OF INDIA TO THE PETITIONER.

EXT.P.2: COPY OF THE REPRESENTATION DTD. 31/03/2006 SUBMITTED TO THE R.3. BY THE PETITIONER.

EXT.P.3: COPY OF THE LETTER DTD. 31/05/2006 ISSUED BY THE R.3. TO THE PETITIONER.

EXT.P.4: COPY OF THE JUDGMENT DTD. 12/09/2002 IN O.P. 37748/2001 OF THIS HONOURABLE COURT.

EXT.P.5: COPY OF THE LETTER NO. RO/2653/23007/8439/1-HD/P&WW/(FP) DTD. 19/07/2006 ISSUED BY THE R.3.

EXT.P.6: COPY OF THE REPLY DTD. 09/08/2006 BY THE PETITIONER.

EXT.P.7: COPY OF THE PENSION BOOK.

EXT.P.8: COPY OF THE DISCHARGE CERTIFICATE.

EXT.P.9: COPY OF THE LETTER NO. RO/2853/230077/8439/HD/&WW(FP) DTD. 31/08/2006 ISSUED BY THE R.3.

EXT.P.10: COPY OF THE LONG ROLL.

EXT.P.11: COPY OF THE PARAGRAPH NO. 595 OF REGULATIONS FOR THE ARMY VOLUME 2 (REVISED EDITION) 1987.

EXT.P.12: COPY OF THE MARRIAGE CERTIFICATE ISSUED BY NSS KARAYOGAM NO. 741, VELOOR, KOTAYAM DTD. 15/08/1998.

W.P.(C). NO.15881/2006:

RESPONDENT'S EXHIBITS:

EXT.R1: COPY OF THE LETTER DT. 28/08/2001 ISSUED BY THE GOVERNMENT OF INDIA.

EXT.R2: COPY OF THE RULE 13 B OF THE CCS (PENSION) RULES, DT. NIL.

EXT.R2.A: COPY OF THE RULE 195 (A) OF THE PENSION REGULATIONS FOR AIR FORCE DT. NIL.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.15881 of 2006-N

Dated this the 30th day of May, 2007

J U D G M E N T

The petitioner is the widow of an ex-service man. Her husband was discharged from the Air Force on 31-12-1975. Later, in 1983, he was re-employed in the Reserve Bank of India. While in service of the Reserve Bank, he died on 28-7-1998. The petitioner is receiving family pension from the Reserve Bank. She moved for family pension from the Air Force. Her claim was rejected by Ext.P3, on the ground that she is ineligible to get family pension as she is receiving the same from the Reserve Bank. This writ petition is filed challenging Ext.P3. The petitioner submits, the point raised by her is covered by the decision of this Court in Ext.P4.

2. The respondents have filed a counter affidavit supporting Ext.P3. According to them, Ext.P4 decision is not applicable to the facts of this case. They also pointed out that there is another wife, Smt. Sujatha, for the deceased employee. The petitioner has filed a reply affidavit denying the averments of the respondents concerning the existence of another wife.

3. Ext.P4 judgment has been affirmed by the decision of this

Court in Writ Appeal No.1445 of 2003. Going by the facts of this case, I feel that the said decision will squarely apply to this case. Since, in Ext.P3, the respondents have not taken up the plea of rival wife, their contention in this regard in the counter affidavit cannot be accepted. Accordingly, the writ petition is allowed. Ext.P3 is quashed. It is declared that the receipt of family pension from the Reserve Bank of India will not act as a disqualification for the petitioner to receive family pension from the Air Force. Accordingly, the second respondent is directed to pass fresh orders, on the claim of the petitioner for family pension in the light of the declaration made herein-above. If there is a rival claimant, it is ordered, her rights, if any, will not be affected by this judgment or the orders passed by the second respondent, pursuant to this judgment.

K.BALAKRISHNAN NAIR, JUDGE.

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